with the defendant." [19] (b) "The plaintiff is precluded relief due to his own credulousness or imprudence." [20]

Similarly, where the woman represents herself as pregnant by a man with whom she has had prenuptial intercourse, when in fact she is not pregnant at all, the courts usually refuse any remedy,[21] because, as the court said in *Fairchild* v. *Fairchild*,[22] "they are equally abominable and filthy in the eyes of the law." A clearer case would be that in which the woman honestly believed she was pregnant, and only after the marriage discovered she was not, for here there would be not a question of fraudulent representation but only innocent mistake. The court would probably refuse relief.

The principal case seems to be well decided because the plaintiff has failed to overcome the presumption of legitimacy, and the fraud was not sufficiently proved to satisfy the requirements of the statute.

J. R. C.

EQUITY

EQUITY—EQUITABLE RELIEF AGAINST POLICE INTERFERENCE WITH BUSINESS

Plaintiff, stipulating that he is the owner of a restaurant in the City of Warren, seeks to enjoin the defendants from stationing police officers in his place of business. The case was appealed on questions of law and fact to the Court of Appeals of Trumbull County from the Court of Common Pleas of that county. During the year of 1938, there were ten arrests and convictions for exhibiting gambling paraphernalia in the plaintiff's restaurant. Officers were kept in plaintiff's place of business from about Nov. 28, 1938, until Dec. 8, 1938, continuously from the time that the restaurant opened in the morning until it closed in the evening. The plaintiff claims that his property and civil rights have been invaded by the actions of the defendants and that such an invasion constitutes a continuing trespass for which the plaintiff has no adequate remedy at law. Plain-

[19] Seilheimer v. Seilheimer, 40 N. J. Eq. 412, 2 Atl. 376 (1885); *but cf.* Winner v. Winner, 171 Wisc. 413, 177 N. W. 680 (1920).

[20] Foss v. Foss, 12 Allen 26 (Mass. 1866).

[21] Herr v. Herr, 109 Pa. Sup. 42, 165 Atl. 547 (1916); Bryant v. Bryant, 171 N. C. 746, 88 S. E. 147 (1916); Mason v. Mason, 164 Ark. 59, 261 S. W. 40 (1924); Donovan v. Donovan, 263 N. Y. S. 336, 147 N. Y. Misc. 157 (1933); Santer v. Santer, 324 Pa. 140, 188 Atl. 531 (1936).

[22] 43 N. J. Eq. 473 at 477, 11 Atl. 426 (1887).

tiff prays that defendants be enjoined from stationing and maintaining police officers in plaintiff's place of business. The court denied plaintiff's prayer for an injunction.[1]

Historically, the development of equity in the field of torts has been mainly in the protection of property rights in land.[2] Since land is something corporeal, the courts of equity were reluctant to assume jurisdiction to protect those things which are incorporeal. There is some authority to the effect that a person cannot secure an injunction to restrain interference with his business because a business is not property and equity only takes jurisdiction where a property right is involved.[3] However, the trend is to broaden the concept of property right to the point that it is now considered to include a business.[4]

The immediate problem is whether one owning a business may secure an injunction restraining police interference with that business. If an operator of gambling devices seeks to restrain police activity directed toward the destruction of such gambling machines, the courts will deny him relief because he can have no property right for this purpose in such machines.[5] The courts have also employed the "clean hands" maxim as a basis of denying equitable relief to one who shows a willingness to conceal evidence as to the legality of his business.[6]

The general rule, based on policy, is that equity will not interfere with police officers in the discharge of their duties.[7] The courts of equity, however, will restrain police interference with the plain-

[1] Monfrino v. Gutelius, 66 Ohio App. 293, 33 N. E. (2d) 1003 (1941).

[2] WALSH, EQUITY (1930) p. 213.

[3] J. Holmes dissenting in the case of Truax v. Corrigan, 257 U. S. 312 (1921) states,

"By calling a business 'property' you make it seem like land, and lead up to the conclusion that a statute cannot cut down the advantages of ownership existing before the statute. An established business no doubt may have pecuniary value and commonly is protected by law against various unjustified injuries. But you cannot give it definiteness of contour by calling it a thing. It is a course of conduct."

Also see FREY, THE LABOR INJUNCTION pp. 33-34.

[4] Featherstone v. Independent Service Station Ass'n of Texas *et al.*, 10 S. W. (2d) 134 (1928); State v. Charles Stewart, 59 Vermont 273, 9 A. 559 (1887); Barr *et al.* v. The Essex Trades Council, The Typographical Union No. 103, of Newark, *et al.*, 53 N. J. Eq. 101, 30 A. 881 (1894).

[5] Snyder v. City of Alliance, 41 Ohio App. 48, 179 N. E. 426 (1931). Concerning a property right in the gambling device, the court on page 55 of the opinion ruled as follows:

"We therefore find it to be an evil chattel, and there is no property right therein which this, a court of equity, recognizes or proposes to protect."

[6] Adolph Hirsch v. Henry Hunt *et al.*, 13 Ohio N. P. (N. S.) 137 (1912).

[7] Pleasants v. Smith, 90 Miss. 440, 43 So. 475 (1907); Delaney v. Flood, 183 N. Y. 323, 76 N. E. 209, (1906).

tiff's business if it is shown that the police officers have no official duty to perform. Thus, the court in the case of the *City of Louisville* v. *Lougher*[8] granted the plaintiff an injunction restraining police officers from interfering with the plaintiff's speech which was not objectionable for it was not made at such a meeting or dangerous assemblage which the police had a duty to suppress. Also in the case of *Boring* v. *Hunt*[9] the court issued an injunction against the stationing of police officers in plaintiff's place of business because the plaintiff was violating no criminal statute but only a civil usury statute. In *Ruty* v. *Huelenbeck*,[10] the court ruled that an injunction may be granted to enjoin interference with operation of business by physical force on mere claim of violation of the criminal law. The language of the court suggested that belief that the primary purpose of the raids was to stop the dance and not to enforce the criminal law.

Insufficiency of evidence of criminal conduct on the part of the plaintiff is an element which may cause the court to issue an injunction against the police officers. In *Burns* v. *McAdoo*[11] the officers claimed that they were kept on the premises because such had been previously used for gambling purposes. The court thought that the evidence failed to show that the plaintiff or his employees were connected with or visited the premises when it was used for gambling purposes and for this reason the court concluded that the stationing of police officers on the premises was not warranted. On the other hand, in the *Cleary* v. *McAdoo* case,[12] the court ruled that since the usual paraphernalia of a poolroom was found on the plaintiff's premises, there was sufficient evidence of criminal conduct to justify the stationing of police officers on and near the plaintiff's premises in order to watch them. The court in the principal case was on solid grounds with respect to the sufficiency of evidence as to plaintiff's business for ten arrests had been made and the plaintiff himself had pleaded guilty to interfering with a police officer in the performance of his duty.

The reluctance of a court of equity to interfere with the enforcement of the criminal law is explained on the grounds that a person accused of crime and threatened with arrest could appeal to a court

[8] City of Louisville *et al.* v. Lougher, 209 Ky. 299, 272 S. W. 748 (1925).
[9] Boring v. Hunt *et al.*, 22 Ohio Dec. N. P. 543 (1912).
[10] Ruty *et al.* v. Huelsenbeck, County Sheriff, 109 N. J. Eq. 273, 156 A. 922 (1931).
[11] Burns v. McAdoo, 113 App. Div. 165 (1906).
[12] Cleary v. McAdoo, 113 App. Div. 178 (1906).

of equity and by pleading that his property rights were about to be interfered with he would be able to thwart criminal justice.[13] This reason should not be allowed to permit unwarranted police interference with one's business.

It is submitted that the best way for a court of equity to approach this problem, granting that jurisdiction exists, is to look at the circumstances of the individual case. It may consider the plaintiff's conduct bad and refuse to take jurisdiction on the "clean hands" maxim. It must, in any event, decide whether the officers are performing official duties in a lawful manner and also whether the evidence as to the illegality of the plaintiff's business is sufficient to justify police interference. Equity must be controlled, however, by broad principles of policy and must exercise considerable caution whenever its decree will interfere with the enforcement of the criminal law.

R. L. R.

REAL PROPERTY

Deeds — Fee Simple Determinable — Necessity for Words of Inheritance in Reverter Clause.

Defendants in an action to quiet title claimed a reversionary interest as heirs of a grantor under an 1849 deed. The deed provided: ". . . The above tract is granted to . . . trustees of aforesaid New Church Society . . . and their heirs forever, to be held by them in trust forever . . . Now the conditions of this grant . . . is that the above named meeting house is to be used for New Church purposes. Provided that should it ever cease to be used for said purposes that then the land is to return to its original owners."

The court rejected the defendant's claim of a reversionary interest and held that the grant created a fee simple absolute. It said that the reverter clause was not of sufficient force to make the grantee's estate a determinable fee in the absence of words of inheritance used with the reversionary interest. *First New Jerusalem Church* v. *Singer,* 68 Ohio App., 119 (1942).[1]

The primary rule in construing conveyances is to effectuate the intention of the grantor,[2] and no special words are essential to create

[13] Snyder v. Swope, Director of Safety, 23 Ohio L. R. 361, 366 (1922).

[1] For authority *contra, see* cases discussed in article, *Reversionary Restrictions,* (1940) U. Cin. L. Rev. 524, 526-532, which are *contra* by implication.

[2] 13 O. Jur. 891; *see* Post v. Weil, 115 N. Y. 361 (1889).